

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

KENNETH G. CHARRON,

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE, et al.,

Respondents.

DOCKET NUMBER WD74844

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 31, 2012

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division Two: Ellis, P.J., and Ahuja and Pfeiffer, JJ.

CONCURRING.

ATTORNEYS

Kenneth G. Charron
Bowling Green, MO

Appellant, *pro se*,

Chris Koster, Attorney General
Michael Spillane, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

KENNETH G. CHARRON,

Appellant,

v.

MISSOURI BOARD OF PROBATION
AND PAROLE, et al.,

Respondents.

OPINION FILED:
July 31, 2012

WD74844

Cole County

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and Mark D. Pfeiffer, Judges

Kenneth G. Charron filed a petition with the Circuit Court of Cole County, Missouri, claiming that the Missouri Board of Probation and Parole unlawfully failed to grant him a probation hearing. Shortly thereafter, Charron filed a motion for change of judge under Rule 51.05(a), and then the Board filed a motion to dismiss. Charron's motion for a change of judge was denied as untimely, and the court granted the Board's motion to dismiss Charron's petition. Charron appeals.

REVERSED AND REMANDED.

Division Two holds:

- (1) Under Rule 51.05(a), a motion for a change of judge shall be granted if the motion is timely filed. To be timely filed, the motion must be made within sixty days of service of process, or within thirty days of the designation of the trial judge, whichever is longer.
- (2) If a motion for a change of judge is timely filed, the trial court can only rule on motions which were already under submission before the motion for change of judge was filed. The trial court lacks authority to rule on any other motions.

(3) Charron's motion for a change of judge was filed within sixty days of service of process. The Board's motion to dismiss was not under submission when Charron filed his motion for change of judge. Therefore, the trial court lacked authority to grant the Board's motion to dismiss, and had to grant Charron's timely filed motion to change judges. The trial court erred in denying Charron's motion for change of judge, and granting the Board's motion to dismiss.

Opinion by: Mark D. Pfeiffer, Judge

July 31, 2012

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